

Decision No. \_\_\_\_\_

33881

BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of THOMAS B. RILEY, )  
 doing business under the firm name and style of )  
 ROY MARK FREIGHT SERVICE, to sell and OREGON-NEVADA- )  
 CALIFORNIA FAST FREIGHT, INC., to buy common carrier )  
 operative rights by motor vehicle for the transporta- )  
 tion of property between Redding and Pittville, )  
 California and intermediate points, and for consoli- )  
 dation and merger of said rights with the existing )  
 operative rights of purchaser and substitution of )  
 Oregon-Nevada-California Fast Freight, Inc., for )  
 Thomas B. Riley as applicant in Application No. 23728 )  
 wherein an extension of said automotive service )  
 between Pittville and Adin, California, and inter- )  
 mediate points, is sought for the transportation of )  
 property. )

ORIGINAL

Application No. 23881

BY THE COMMISSION:

O P I N I O N

By the above-entitled application, filed on December 20, 1940, Thomas B. Riley, doing business as Roy Mark Freight Service, seeks authority to sell and transfer his operative right as a highway common carrier between Redding and Pittville to the Oregon-Nevada-California Fast Freight, Inc. (1) In the same application, the latter carrier seeks authority to purchase and consolidate said operative right with its existing operative right between San Francisco and Redding. The Oregon-Nevada-California

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(1) By Decision No. 31569 of December 19, 1938, in Application No. 22411, Thomas B. Riley was authorized to purchase from Roy Mark an operative right for the transportation of property as a highway common carrier between Redding and Pittville, serving the intermediate points of Ingot, Round Mountain, Montgomery Creek, Burney, Cassel, Fall River Mills, Glenburn and McArthur, said operative right having been originally granted to Roy Mark by Decision No. 24794 of May 23, 1932, in Application No. 18148.

The Oregon-Nevada-California Fast Freight, Inc. operates, among other places, between San Francisco, Oakland, Alameda, Berkeley, Emeryville and San Leandro, on the one hand, and Redding on the other hand.

Fast Freight, Inc., also requests that it be substituted in lieu of Thomas B. Riley as the applicant in Application No. 23728, a proceeding now pending before this Commission. (2)

In support of the application, it is alleged that Thomas B. Riley presently operates a passenger stage line between Redding, Alturas and Lakeview and devotes most of his time to this operation; that due to these demands upon his time, he has been and will be unable to properly manage and operate the highway common carrier service for the transportation of property, between Redding and Pittville, here sought to be sold and transferred. It is further alleged that the applicant Oregon-Nevada-California Fast Freight, Inc. is well qualified, financially and otherwise, to properly conduct said highway common carrier operation and that the public interest would be served by authorizing the transfer of said operative right to that carrier.

In addition, the application points out that by Decision No. 32568 of November 17, 1939, in Application No. 23077, this Commission authorized the establishment of joint rates between San Francisco and Bay Area points served by the Oregon-Nevada-California Fast Freight, Inc., on the one hand, and points on the line of the Roy Mark Freight Service between Redding and Pittville, on the other hand; that said joint rates were subsequently established and are now maintained pursuant to said authority; that the interests of the shipping public now protected by said joint rates, require that the operative right here involved be

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(2) By Application No. 23728, now set for hearing before Commissioner Riley and Examiner Hunter, on March 20, 1941 at Alturas, the applicant, Thomas B. Riley, seeks authority to transport property as a highway common carrier between Pittville and Adin, and intermediate points.

consolidated and merged with the existing operative rights of the Oregon-Nevada-California Fast Freight, Inc., inasmuch as said consolidation will permit the establishment of through routes and through rates, in lieu of the existing joint rates; and finally, that the same reasons which justified the granting of the former authority for the establishment of the joint rates still exist, and now justify the merger of the two operations.

For a purchase price of \$9,000, according to a copy of an agreement dated December 14, 1940 (attached to the application as Exhibit "B") applicant Riley (as seller) proposes to sell to the Oregon-Nevada-California Fast Freight, Inc. (as purchaser) the following described property: (a) all of the operative rights heretofore granted to the seller by the Interstate Commerce Commission for the transportation of property between Redding and Pittville (not including interstate operative rights for the transportation of passengers and express); (b) all intrastate operative rights heretofore granted by this Commission and owned and operated by the seller under the name of Thomas B. Riley, as lessee of Roy Mark Freight Service; (c) all right, title and interest of Thomas B. Riley to Application No. 23728, now pending before this Commission, whereby the seller seeks an extension of operative rights for the transportation of property between Pittville and Adin; and (d) one Diamond T motor truck and one Ford truck both of which are now used by seller in the conduct of his freight business.<sup>(3)</sup>

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(3) \$6,000 of said purchase price, according to the agreement of sale, is to be paid to the seller by the purchaser upon obtaining temporary authority from the Interstate Commerce Commission to operate said operative rights, and the remaining \$3,000 is to be paid to the seller upon the granting of final authority to acquire and operate said line.

By a sworn affidavit filed in this proceeding on January 7, 1941, applicant Thomas B. Riley reports that the gross revenues derived from his operation of the Roy Mark Freight Service were \$4,710.46 for the year 1939, and \$5,657.45 for the first ten months of the year 1940. The affidavit further states that service is now rendered thrice weekly, leaving Redding on Mondays, Wednesdays and Fridays, and returning on Tuesdays, Thursdays and Saturdays.

Upon consideration of the facts of record, we are of the opinion and find that this is not a matter in which a public hearing is necessary; that the reasons advanced in support of the authority sought are good and sufficient; and that the transfer of said operative right, as well as the consolidation and merger thereof with the existing operative rights of the Oregon-Nevada-California Fast Freight, Inc. is and will be in the public interest. An order will be entered accordingly.

In making the order, however, the Commission wishes to place the applicant, Oregon-Nevada-California Fast Freight, Inc., upon notice that the consideration to be paid for the purchase of the instant operative right and the intangible property included therewith, does not constitute an equity which may be capitalized or used as an element of value in determining reasonable rates. Only so much of said consideration as may be reasonably allocated to the present market value of the two motor trucks and the actual value of any additional tangible assets transferred by the agreement of sale, may be used as a basis for capitalization and rate making. Said applicant is further advised that while "operative rights" extend to the holder a full monopoly of a class of business over a particular route, this monopoly

feature may be changed or destroyed at any time by the state which is not in any respect limited to the number of rights which may be given.

O R D E R

Application having been made for an order (1) authorizing Thomas B. Riley, doing business as Roy Mark Freight Service to sell <sup>and transfer</sup> said operative right to the Oregon-Nevada-California Fast Freight, Inc., (2) authorizing the consolidation and merger of said operative right with the existing operative rights of the Oregon-Nevada-California Fast Freight, Inc., and (3) authorizing the substitution of Oregon-Nevada-California Fast Freight, Inc. in lieu of Thomas B. Riley, as the applicant in Application No. 23728 now pending before this Commission; and the Commission being of the opinion that this is not a matter in which a public hearing is necessary and that the application should be granted, as herein provided, now therefore,

I

IT IS HEREBY ORDERED that Thomas B. Riley be and he is hereby authorized to sell and transfer to the Oregon-Nevada-California Fast Freight, Inc., that certificate of public convenience and necessity heretofore acquired by him pursuant to authority granted by Decision No. 31569, dated December 19, 1938, in Application No. 22411, said sale to be consummated in accordance with the terms and conditions of the agreement dated December 14, 1940 between the said Thomas B. Riley and Oregon-Nevada-California Fast Freight, Inc., a copy of which agreement is attached to the application as Exhibit "B," provided:

1. The consideration to be paid for the property herein authorized to be transferred shall never be urged before this Commission, or any other rate fixing body, as a measure of value of said property for rate fixing, or for any purpose other than the transfer herein authorized.

II

IT IS HEREBY FURTHER ORDERED that the Oregon-Nevada-California Fast Freight, Inc. be and it hereby is authorized to purchase and consolidate the above described operative right as a highway common carrier of property between Redding and Pittville, and intermediate points, with intrastate operative rights presently operated by it pursuant to Decision No. 27293, dated August 27, 1934, as amended, in Application No. 19044, and Decisions Nos. 32015 and 32133, of May 23, 1939 and June 27, 1939, respectively, in Application No. 22668, thus effecting through rates and through service for the transportation of property between the following points:

<u>Between</u>	<u>And</u>
San Francisco Oakland Berkeley Alameda Emeryville San Leandro, on the one hand,	Points between Red Bluff and Dunsmuir, including Red Bluff and excluding Dunsmuir; and by diversion at Redding, points between Redding and Pittville, both inclusive, on the other hand.

III

IT IS HEREBY FURTHER ORDERED that in the operation of said highway common carrier service pursuant to the foregoing certificate, Oregon-Nevada-California Fast Freight, Inc. shall comply with and observe the following conditions and service regulations:

1. Subject to the authority of this Commission to change or modify same at any time by further order, Oregon-Nevada-California Fast Freight, Inc. shall conduct said highway common carrier operation over and along the following described routes:

San Francisco - Dunsmuir

Via San Francisco - Oakland Bay Bridge, and Carquinez Bridge, Highway No. 99-W, via Dixon and Corning, and Highway No. 99-W to Red Bluff, thence via Highway No. 99.

Redding - Pittville

Via above described route between San Francisco and Redding, thence by diversion via California State Highway No. 299.

2. Applicant shall file his written acceptance of the certificate herein granted, within a period of not to exceed thirty (30) days from the date hereof.
3. Applicant shall file, in triplicate, and make effective within a period of not to exceed thirty (30) days from the effective date hereof, on not less than fifteen (15) days' notice to the Railroad Commission and to the public, a tariff and time schedule covering the through service herein authorized, in a form satisfactory to the Railroad Commission, said tariff to contain rates, charges, rules, and regulations no lower than the minimum rates, charges, rules, and regulations established by this Commission by Decision No. 31606, as amended, in Case No. 4246.
4. The rights and privileges herein authorized may not be sold, leased, transferred or assigned, nor service thereunder discontinued, unless the written consent of the Railroad Commission to such sale, lease, transfer, assignment or discontinuance has first been obtained.

IV

IT IS HEREBY FURTHER ORDERED that the Oregon-Nevada-California Fast Freight, Inc. be and it is hereby authorized to be substituted in lieu of Thomas B. Riley as the applicant in Application No. 23728, and that an appropriate order of substitution be entered on its behalf in that proceeding.

The effective date of this order shall be twenty (20) days from the date hereof.

Dated at Los Angeles, California, this 18<sup>th</sup> day of  
February, 1941.

W. H. Miller  
Kathryn W. ...  
Ray & Riley  
Justus J. ...  
Francis K. Havenner  
 COMMISSIONERS